

Town of Brookline
Advisory Committee Minutes

Harry K. Bohrs, Chair

Date: April 8, 2014

Present: Harry K. Bohrs, Carla Benka, Sumner J. Chertok, Lea Cohen, John Doggett, Bernard Greene, Kelly A. Hardebeck, Nancy S. Heller, Amy F. Hummel, Systke Humphrey, Angela Hyatt, Alisa G. Jonas, Janice S. Kahn, Bobbie Knable, Pamela Lodish, Sean M. Lynn-Jones, Shaari S. Mittel, Michael Sandman, Lee L. Selwyn, Charles Swartz, Leonard A. Weiss, Karen Wenc,

Absent: Clifford M. Brown, Fred Levitan, Stanley L. Spiegel, Christine Westphal

The meeting was called to order at 7:30 PM.

1. Agenda Item: WA 13. Amendment to Article 8.23 of the Town's By-Laws – Tobacco Control -- creation of a 400 ft. no-smoking zone around Brookline High School. (Petition of Nathan Bermel)

Presenting for the subcommittee is: Sytske Humphrey

See Appendix for Report of Subcommittee.

Also Present: High School Students, and HS students Nathan Bermel and Mary Fuhlbrigge, petitioners

Humphrey: Ample notice given to – tobacco vendors in town, HS administration, and others effected. Issues that were raised about offering smoking cessation program in lieu of fines, and other enforcement issues that would be acceptable, per Town Counsel, if the word 'people' were changed to 'minor' in the article. Committee is interested in a smaller perimeter in the amendment, and an amendment to 'minor' which refers to a person 19 years old in the context of smoking.

Petitioners: Issues are: 1) smokers in front of the HS are the first thing people see, which is a very poor image for the HS: 2) everyone is subject to 2nd hand smoke who passes through there (typically several hundred students congregating after school and subject daily to the smoke, as well as community members, dog walkers, They note that Newton North HS perimeter significantly reduced smoking at that HS.

Q: How do residents feel about this? What type of neighborhood input has there been? A: By Mary Minot, advisor to the peer HS group: they had an open meeting and invited people to the meeting, but not the BNA. Some neighbors were there and were pleased about this warrant.

Q: How would it be enforced? A: There are two plain clothes officers at the HS now, and would enforce this. They would not involve the police.

Q: Would students self-enforce? A: Students – many – are very supportive of this.

Q: He knows this is a big problem to HS students, but concerned that perimeter would affect neighboring houses, based on where they live. What about imposing ban on HS property, park, and adjacent sidewalks, rather than dealing with possible pushback from neighbors. A: Currently, students already smoke on street beyond the HS. Also, if you push out with this perimeter, if it's too small, you'll dump all the smokers just a bit further out and create a new hangout location.

Q: Perimeter? 50 feet would solve the fundamental problem. And allow the public in this area to smoke. A: 50 feet would push you into the playing field. Even if playing field, that would just create new smoking locations.

Q: Have they been in touch with school authorities and school department to deal with this? For example, making it a punishable offense? A: They wanted to protect from 2nd hand smoking of non-students, such as faculty and other people who pass by and smoke. The faculty talked about perimeter for 1.5 years, and felt that 400 feet would best meet the goals.

Q: Also applies to people who are driving through in cars? A: Yes.

Q: What about smokeless cigarettes? A: This is not part of this article; it's only smoke and tobacco products.

Comment: Substitute minor for person would suggest that only minors couldn't smoke there. But definition of minor varies and is not adequate without more definition.

Q: Are there faculty smokers and where would they go? A: Yes, including custodian staff as well as faculty.

Q: How would plainclothes officers enforce this? A: These fall under school department, and they are fully supportive of this.

Q: What about open campus rule prohibits leaving for smoking? A: Current limitations around grade point average. You are assigned to study hall if you are not eligible for open campus.

Comment: School officers don't have authority to enforce this outside school grounds. Nor will this completely discourage smoking. He'd vote for perimeter around the school.

Comment: Define the group as minors (under 19, per tobacco by laws) and school personnel.

Comment: Buffer doesn't apply to private property, but only public ways/sidewalks/ parks.

Q: Enforcement? A: Parents would be informed; there would be possibly other incentives. They are not trying to punish students. It is working in Newton. 900 foot perimeter with 4 signs only.

Bohrs: Issues: 1) Perimeter with enough transit time that students cannot get a smoke between classes: 2) who is affected – name – could include minors and perhaps school staff.

Votes:

Upon motion duly noted and seconded, the committee voted in regard to the Amendment to WA 13 In section 8.23.4: to amend person 'and replace with 'minors' :

Vote: 6 in favor – 10 opposed – 1 abstained

Upon motion duly noted and seconded, the committee voted in regard to the Amendment to WA 13 In section 8.23.4: to amend 'person' to 'minor and school personnel':

Vote: 15 in favor – 2 opposed – 1 abstained

Upon motion duly noted and seconded, the committee voted in regard to the Amendment to WA 13 to reduce the perimeter from 400 to 100 feet:

Vote: 7 in favor – 11 opposed – 2 abstained

Upon motion duly noted and seconded, the committee voted in regard to WA 13 as Amended to replace 'persons' with 'minors and school personnel':

Vote: 14 in favor – 4 opposed – 2 abstained

2. Agenda Item: WA 14. Amendment to Article 8.23 of the Town's By-Laws – Tobacco Control -- increase the legal age to purchase tobacco products from 19 to 21. (Petition of Nathan Bermel)

Presenting for the subcommittee is: Lea Cohen

See Appendix for Report of Subcommittee.

Also Present: High School Students, and HS students Nathan Bermel and Mary Fuhlbrigge, petitioners

Bermel: This warrant would replace word 19 with 21 in definition of minor in Tobacco By-Laws.

Note: 7-11 store near BU who relies on this cigarette business would be extremely negatively affected by this article as most of their customers, college age, come to buy cigarettes.

Q: Towns that have age 21 minimum age did it by health regulation. Why not do that here? Balsam: They come to town meeting to develop a community base and support for health regulations.

Q: What is data to support that this will reduce HS smoking? A: Dr. Winickoff: Data isn't strong enough to demonstrate that increasing sales age decreases HS smoking. But in Needham, which raised this age to 21 in 2005, there was a 3-fold reduction in HS smoking compared to immediate adjacent towns.

Q: Looking at other locations: none of those with colleges? Or at least with the large population of college students we have, as well as international students in Brookline?.

Vote:

Upon motion duly noted and seconded, the committee voted in regard to the motion duly seconded to accept WA 14 as written:

16 in favor – 2 opposed – 3 abstained

4. Agenda Item: WA 32. Resolution In Support of Senate Bill 1225 – An Act Relative to Public Investment in Fossil Fuels. (Petition of Frank Farlow and Byron Hinebaugh)

Presenting for the subcommittee is: Alisa Jonas

See Appendix for Report of Subcommittee.

Also Present: Petitioners Frank Farlow and Byron Hinebaugh; and also Steve Lydenberg

Discussion:

Note: Whatever the state pension fund does, our Brookline pension fund must also do.

\$24.3 mil of Brookline is in State's Retirement Fund. Approximately 10%. Less than 3% of state's pension fund invested in direct holdings (SB 1225 only applies to direct holdings, not mutual funds).

Bohrs spoke with Steve Cirillo: That this state restriction would apply to local pension funds. He spoke with our pension fund manager, Russell, and several other investment managers; they estimate it would be a reduction in return of 1 – 2.5%. At the 1%, that would translate to a decrease of 8-10 million dollars. That's these managers' estimate. Other estimates claim no effect whatsoever.

Boston Globe reported this week that Harvard decided not to divest in fossil fuels last year.

Farlow argues that most of Brookline's state pension investments would not be affected, but that is not at all clear from the authorities.

Q: How would this directly affect climate change? A: By analogy to the apartheid movement, that the more institutions, colleges, and CEOs do it, it becomes a subject of discussion for the mass media, making it a moral issue for the country as a whole. Public opinion will affect Exxon the way it affected apartheid.

Comment: Doesn't know how effective this would be. In geopolitical terms, there is not enough natural gas now, so we are still dependent on fossil fuels. We need them until some point in time when alternative non-fossil fuels kick in. In the short term, if this were effective, it would make the fossil fuels we need more expensive, which then converts to higher energy cost, without impacting climate change.

A: Immediate implementation makes non-fossil energy more competitive.

Q: Any response from people whose pensions are invested by state. What is their position, interest, etc.? A: It doesn't appear that they have been contacted formally.

Q: Assuming that climate change is a serious issue and fossil fuels are problematic, but divestment as an option is offensive. And – it's addressing the supply side, not the demand side. In Brookline, we've been addressing demand side, with solar, LED lighting, reducing usage. But by divesting large amounts of funds into these companies, we walk away from influencing how they operate. A .5 – 1% drop in yields in the yield levels we have now are enormous in today's market. Our retirement systems are in great pressure, and this will add huge pressure, without any clear vision for what it provides for benefits. If this is symbolic, it is a very poor approach to this, not to mention the unintended consequences. It is not the right approach.

Comment: Fossil fuel age will end when something better comes along. This resolution has nothing to do with something better coming along. This is a feel good provision without doing anything about global warming, while undermining our pension investments.

Comment: Among the unintended consequences, you prohibit towns having shareholder activity with respect to these activates. Town can put resolutions, for example, to Exxon, if they own large number of shares. Has petitioners thought about this? A: People in the 'movement' agree corporate change possibility is about at .1% by shareholder action.

Comment: Feels it is unlikely Steve Cirillo said that our pension would decline by as much as Bohrs repeated. Cirillo was talking % points, and it is analysis given to him by 3 investment group managers. He doesn't have a real opinion; whatever is decided, we will fund a pension, no matter how much the pension declines. We will also have some up-to-date numbers from these 3 investment groups, hopefully before Town Meeting.

Comment: The indirect exception vitiates most of this, since you can hold fossil fuels in mutual funds as much as you wanted.

Comment: There are two issues here: 1) our pension fund 2) what town wants to do around climate change. Issue becomes what is the best way for us as a town / community to present our message around climate change.

Comment: This doesn't make the statement it's meant to make. For example, Shell is investing in hydrogen, thermal, geothermal, and has made a substantial effort to develop alternatives to fossil fuels, so they can be in business, no matter what source of energy we use. Exxon is solely focused on

developing gas and oil now. Right now, Exxon is getting better rate of return. But this resolution doesn't distinguish between a thoughtful, forward looking fossil fuel company and one that is just focused on the short term gains.

Comment: It's good to add a voice.

Comment: We're demonizing oil companies, but it isn't the best instrument to get what we want.

Comment: Proponents have failed to draw any direct nexus between results they want and what they are proposing. It is effectively a PR stunt, without understanding the consequences; these are very complex issues, and without understanding consequences or linkage, is not good for the town.

Comment: It's good for us to make a statement, to get Exxon to think the way Shell thinks. The less we give to those companies, they'll change their ways.

Q: Table until we understand financial implications?

Q: How do we define a fossil fuel company? What if they are also investing in non-fossil fuels? A: There is going to be an amendment to define fossil fuel company, using federal industry codes. Any company having one of those codes, even if in other industries, would be subject to this.

Votes:

Upon motion duly noted and seconded, the committee voted in regard to a Motion to Table:

Vote: 6 in favor– 14 opposed – 1 abstained

Upon motion duly noted and seconded, the committee voted in regard to the Subcommittee's recommendation in favor of Amended Warrant Articles:

Vote: 7 – in favor - 12 opposed – 2 abstained

3. Agenda Item: WA 27. Resolution Regarding the Honoring of the Memory of Brookline Veterans. (Petition of Neil Gordon)

Presenting for the subcommittee is: Nancy Heller

Also present: Neil Gordon, Petitioner, and Veterans Director, Bill McGroarty

See Appendix for Report of Subcommittee.

Discussion:

Normally, Veteran receives military honors at the funeral. In some cases, a small percentage, they don't get a flag, but McGroarty has flags in his office which can be loaned. This will direct BOS to implement this, which is a simple process, with no cost. Raise the flag, read the certificate from BOS, perhaps play taps.

Comment: Encourage members to attend Memorial Day and Veterans Day services at Brookline. Very moving and meaningful.

Upon motion duly noted and seconded, the committee voted in regard to the Subcommittee's recommendation for favorable action:

Vote: 20 in favor – 0 opposed - 1 abstained

Motion to adjourn, unanimous.

The meeting was adjourned at 10:35 PM.

Appendix:

1. WA 13 subcommittee report, HS map engineering, BHS Buffer Map and Letter of Support
2. WA 14 subcommittee report, T21 municipalities, and T21 reducing tobacco use reports
3. WA 27 subcommittee report
4. WA 32 subcommittee report

Due notice was posted on the Town's website. In addition the school superintendent and headmaster, all tobacco vendors and precinct 6 Town Meeting Members were notified of the committee hearing.

Warrant Article 13

Warrant Article 13 seeks to amend Article 8.23 of the Town's General Bylaws on Tobacco Control by amending section 8.23.3 on regulating conduct in Public Places by adding the following sub paragraph

Article 8.23, SEC 8.23.4 (page 371 of Town Bylaws)

[No person shall smoke in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School Grounds.

The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph...]

And by amending section 8.23.6 (Violations and Penalties) by adding the following sentence after the first paragraph

Article 8.23, SEC 8.23.6 (page 373 Town Bylaws)

For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of fines set forth in this section and in Section 10.3 of these By-Laws

In Attendance: Nathan Bermel and Mary Fuhlbrigge (co-petitioners), Mary Minot (SW and HS Peer Leaders Advisor), Alan Balsam (Director Health and Human Services), Rob Auffrey (DPH), Jonathan Winickoff MD (pediatrician and T21 supporter), Wesley Chin (DPH), Neil Shah (7-eleven), Felice DAnna (7-eleven), Mr. Harshad (Kurkman's market), Tommy Vitolo (TMM 1), Edie Brickman, Lea Cohen (AC), Sytske Humphrey (AC)

Petitioner's explanation

The petitioners, Nathan Bermel and Mary Fuhlbrigge are Peer Leaders at the High School and have worked on issues related to tobacco control and addiction with their advisor Mary Minot.

Tobacco control is the leading cause of preventable deaths and the article was filed to continue to change High School Students' smoking behaviors by creating a no-smoking zone (the age 19 tobacco purchase limit has not created a great change). A change in behaviors will result in fewer addictions and will save lives in the future. Currently the side walk in front of the HS ("Smokers Alley") is usually populated with groups of smokers throughout the school day and larger groups of smokers congregate there after school. At BHS 17% of seniors have smoked recently. When surrounding communities implemented no-smoking zones smoking decreased sharply –at Newton North down to 4% for girls and 6.3% for boys.

The petitioners stated:

"We want to change the way we look and make a better impression when visitors come to our

High School”

“We are concerned about second hand smoke for all who pass by”

“We don’t want to normalize smoking behaviors for the BEEP preschoolers who are located at the HS”

Removing easy access will also remove the image of “the Cool Crowd”

“ We do not want to punish smokers, take a smoking cessation class instead of a fine”

Discussion

When Newton North implemented the no-smoking zone neighbors felt very positive about this change. The students met with the Brookline Neighborhood Association and felt supported by this group. It is not clear if abutters were part of the BNA meeting. The Headmaster of the HS is concerned about smoking in front of the school: many parents are upset about their kids smoking at school when they are not allowed to do so at home. According to the petitioners there is a lot of support for this article from the HS population. Given the large perimeter, petitioners were asked if they are willing to amend the article and reduce footage around perimeter.

Dr. Jonathan P. Winnickoff stated the importance of developing a SAFE ZONE for students and that the size of a no-smoking zone is important for de-normalizing smoking. Tobacco is the only product that kills half the people who use it and over time adoption of this article will save many lives.

Concern was raised about banning something on a public street that is not now banned. There are many questions how the proposed ban will affect adult activities in the evening (soft ball, dog walkers, people chatting). An additional concern about how abutters will react to additional signage. Public streets with private residencies will be affected and no accommodations for teachers who smoke have been made.

The following questions were raised and referred to Town Counsel:

1. Is it possible that the wording this article may offer smoking cessation/education program instead of fines for all violations related to tobacco use ?
2. Enforcement issues (after school, mixed message for park users, new rule without enforcement rule)
3. Are the petitioners willing to amend the article and reduce footage around perimeter?

No-smoking zone considerations

Town Council approved the map (showing 400 feet radius around school grounds) that was produced by engineering. Mr. Pappasturgion will present the cost for signage. According to the Chief of Police reinforcement of this article is the task of the Public Health Department and Schools. Dr. Balsam stated that the goal of this article is not to harass park users and that the aim is to get High School students to stop smoking on school grounds. The Brookline Health Council takes up article 13 at its next meeting.

To date we have not received support for the article from SC or School administrators.

Voted

The subcommittee voted 1-0-1

After further study of the issues the committee is in support of the intent of the article, but very concerned about the issues that have been referred to town counsel.

ARTICLE 8.22 TOBACCO CONTROL

SECTION 8.22.1 DEFINITIONS

- a. Tobacco - Cigarettes, cigars, snuff or tobacco in any of its forms.
- b. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product.
- c. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco products by self service, with or without assistance by a clerk or operator.
- d. Minor - A person under eighteen years of age.
- e. Employee - A person who performs work or services for wages or other consideration.
- f. Employer - A person, partnership, association, corporation, trust or other organized group, including the Town of Brookline and any department agency thereof, which utilizes the services of three (3) or more employees.
- g. Workplace - Any enclosed area of a structure in the Town of Brookline, at which three or more employees perform services for an employer.
- h. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
- i. Function Room - A separate, enclosed room used exclusively for private functions within a food service establishment.
- j. Bar/Lounge - An area within a food service establishment which is devoted primarily to serving alcoholic beverages for consumption by guests on the premises, and in which the consumption of food is only incidental to the consumption of such beverages.

SECTION 8.22.2 REGULATED CONDUCT

a. Food Service Establishments

(1) All food service establishments shall be 100% nonsmoking except as otherwise specifically permitted under this by-law.

(2) Waiver of nonsmoking provision for bars and lounges -

The owner or operator of a food service establishment containing a bar/lounge may apply for a waiver of the nonsmoking provision of SECTION 8.22.2(1) with respect to the bar/lounge. The application shall state when the waiver shall terminate, provided, always,

that such termination shall not be later than January 1, 2000.

Application shall be made in writing to the Director of Public Health (Director), stating the reasons and justification for the request. Following no less than two weeks public notice, the Director shall conduct a public hearing on the request, at which the owner or operator shall present the request and the basis for the request. After the hearing the Director may grant the requested waiver, provided:

a.the owner or operator has owned or operated the establishment continuously since November 15, 1994;

b.on November 15, 1994, the establishment contained a bar/lounge according to the records of the Town;

c. the number of the seats in the bar/lounge do not exceed 25% of the establishment's total seating capacity;

d. the bar/lounge occupies a separate, enclosed room;

e. the bar/lounge is equipped with a separate ventilation system that provides an air circulation rate of at least 60 cubic feet per minute per person and exhausts air at a rate of at least 110% of supply to produce a negative air environment; and

f.the configuration of the establishment is not such as to require dining patrons to pass through any portion of the bar/lounge when entering or exiting the establishment.

3. The Director of Public Health may adopt regulations providing for the implementation of SECTION 8.22.2(2) of this by-law.

b. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any health care facility, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2)Taxi/Livery services licensed by the Town of Brookline shall provide smoke-free vehicles in accordance with the following schedule:

a.As of 3/1/94, 25% of all vehicles

b.As of 1/1/95, 100% of all vehicles

The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Nonsmoking vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate individual rooms as nonsmoking in accordance with the following schedule:

a. As of 3/1/94, 25% of individual dwelling units or rooms,

b. As of 1/1/95, 50% of dwelling units or rooms,

c. As of 1/1/96, 90% of dwelling units or rooms.

c. Workplaces

1. Every employer shall establish, post and implement a workplace smoking policy and shall, upon request, furnish a written copy of such smoking policy to any employee or to the Director of Public Health. A workplace smoking policy shall include a grievance procedure whereby an employee may seek relief if he/she is exposed to tobacco smoke in the course of his/her work duties. Upon written request by three or more employees, an employer may, but is not required to, designate a "Smoking Area", provided that such a smoking area shall not adversely affect the health and well being of nonsmoking employees or members of the public. An employer may furnish a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for nonsmoking employees. All smoking in the workplace shall be prohibited on or before January 1, 1995.

2. Workplaces with function rooms must establish and post a workplace policy that states "Employees are not required to work at private functions in which smoking is allowed." Employees who do not want to work at such functions must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

3. Hotels must establish and post a workplace policy that states "Employees are not required to work in rooms in which smoking is allowed." Employees who do not want to work in such rooms must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

4. Food service establishments that permit smoking under the waiver provisions of Section 8.22.2 (2) shall establish and post a workplace policy that states: "Employees are not required to work in the bar/lounge.

5. Every establishment in which smoking is permitted pursuant to this Bylaw shall designate all positions that require the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for

employment in a smoking position, in writing, that the position requires continuous exposure to secondhand smoke, which may be hazardous to the employees health.

6. No establishment in which smoking is permitted pursuant to this By-law may require any employee whose effective date of employment was on or November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

7. No establishment in which smoking is permitted pursuant to this Bylaw may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

8. No establishment in which smoking is permitted pursuant to this Bylaw may designate more smoking positions, as a proportion of the total number of service positions, than the number of seats in portion of the establishment in which smoking is permitted bears to the total number of seats legally permitted in the establishment.

9. It is the intent of this Bylaw that a designated smoking position shall not be considered suitable work for purposes of G.L.C. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

10. Each establishment in which smoking is permitted pursuant to this Bylaw shall post, and make available to all job applicants, a statement inviting employees and job applicants to notify the Board of Selectmen regarding any violation of the policies in this section (Workplaces).

SECTION 8.22.3 POSTING REQUIREMENTS

a. Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

b. Food service establishments in which smoking is permitted under the waiver provisions of SECTION 8.22.2(2) shall post in a conspicuous location, at each entrance used by the general public, a notice provided by the Director of Public Health. This notice, which shall not be smaller than 80 square inches nor larger than 120 square inches in overall area, shall state that smoking is permitted in the establishment and contain a warning concerning the risks of environmental tobacco smoke.

SECTION 8.22.4 SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - No person, firm, corporation, establishment or agency shall sell tobacco

products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges.

b. Tobacco Vending Machines - The sale of tobacco products by means of vending machines is prohibited.

c. Distribution of Tobacco Products - No person, firm, corporation, establishment or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product "giveaways", or distribution of a tobacco product as an incentive, prize, award or bonus in a game, contest or tournament involving skill or chance.

d. Sales to Minors - No person, firm, corporation, establishment, or agency shall sell tobacco products to a minor.

e. Advertising/Promotion - From and after January 1, 1995, free standing tobacco product displays in retail locations, where a tobacco product is accessible to the public, shall be within twenty feet and the unobstructed view of a check-out or cash register location.

SECTION 8.22.5 VIOLATIONS AND PENALTIES

a. Any person who knowingly violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of not more than \$50 for each offense.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of not more than \$100 for each offense.

c. Persons, firms, corporations or agencies selling tobacco products to minors or selling tobacco products without a Tobacco Sales Permit shall be punished by a fine of not more than \$200 per day for each day of such violation.

d. Employees who violate any provision of Section 8.21.2(c) shall be punished by a fine of not more than \$100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a non-criminal manner as provided in PART X of the Town By-Laws.

SECTION 8.22.6 SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any

section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

Human Services Subcommittee Hearing
Tuesday, April 1, 2014
7:00 PM Town Hall, room 408

Due notice was posted on the Town's website. In addition the school superintendent and headmaster, tobacco vendors and three colleges were notified

Warrant Article 14

Warrant Article 14 seeks to amend Article 8.23 of the Town's General Bylaws on Tobacco Control by amending section 8.23.2 (d) and change the definition of Minor by deleting the word "nineteen" and replacing it with "twenty-one".

Article 8.23, SEC 8.23.4 (page 365) of Town Bylaws)

Minor- A person of nineteen years of age.

In Attendance: Nathan Bermel and Mary Fuhlbrigge (co-petitioners), Mary Minot (SW and HS Peer Leaders Advisor), Alan Balsam (Director Health and Human Services), Rob Auffrey (DPH), Jonathan Winickoff MD (pediatrician and T21 supporter), Wesley Chin (DPH), Neil Shah (7-eleven), Felice DAnna (7-eleven), Mr. Harshad (Kurkman's market), Tommy Vitolo (TMM 1), Edie Brickman, Lea Cohen (AC), Sytske Humphrey (AC)

Petitioner's explanation

The petitioners, Nathan Bermel and Mary Fuhlbrigge are Peer Leaders at the High School and have worked on issues related to tobacco control and addiction with their advisor Mary Minot.

Tobacco control is the leading cause of preventable deaths and the article was filed to prevent addiction to tobacco by limiting youth access by restricting the sale of tobacco products to aged 21 and over. Ninety percent of smokers start before age 21. When Needham changed their age restriction to 21, the youth smoking rate of 14% dropped to 6.7%. The brain is not fully developed and through increasing the age there will be a less detrimental effect on development. Youth is targeted by tobacco companies through products that are wrapped in shiny colorful candy like paper, single chocolate flavored cigarettes etc. Tobacco companies target youth because this will be their future customer base.

Discussion

Most present supported this article and restated many of the arguments mentioned under article 13. Mention was made that it may be easier for liquor stores to accept the increase in age, since they already cater to 21 and up.

The seven-11 merchants would like to see a universal law: having the increase only for Brookline will be problematic for them since it is already very difficult to make ends meet (the 3 seven-11's have the lowest volume of 50,000 stores). Their business depends on tobacco sales and the incidentals that go with it (coffee, sandwich etc). The business plan for seven-11 is changing by adding more healthy snacks and fresh fruit and is slowly decreasing its dependence on tobacco products. These stores cannot be

compared with suburban businesses (such as Needham) since they are catering to college age students and one of these businesses is across of the BU campus. Mr. Hashad (Kurkman's market) supports the increase in age, however his grocery store is not dependent on tobacco sales.

According to Dr. Winickoff tobacco sales to 21year olds and under is about 2%. That 2% seeds all of the future smokers. When Needham increased the age to 21, no businesses went under and consumers continued to frequent stores for other purchases. Needham experienced a 57% drop in youth smoking (between 2008 and now). Increasing the purchase age will stop the transmission effect of older siblings influencing younger ones and it will bring "A tidal wave of good health". Dr. Balsam mentioned that Boston looks to Brookline and will not move to age 21 until we do.

Considerations

The Brookline Health Council takes up article 14 at its next meeting. To date we have not received feedback from SC or School administrators. We received no communication from the three colleges we contacted. We received an e-mail not supportive of article 14 from a SC member. Additional addictive substances are chewing tobacco and e-cigarettes.

Voted

The subcommittee did not take a position on this article.

The subcommittee wanted to further study to see if this article can be put forward at a time when Boston or Massachusetts seek to raise the minimum age, in order to minimize the economic effect on the five merchants who will be negatively affected by this bylaw. The Joint Public Health Committee (Chairman Representative Jeffrey Sanchez) told us that Mr. McMurty of Dedham has filed a bill (HD4115) to raise the minimum age for tobacco sales to 21. The bill has not yet been assigned to a committee.

Municipal Tobacco Control Technical Assistance Program

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outdated
up to
16 towns
misses in

LOCAL POLICIES ON INCREASING THE MINIMUM AGE RE: TOBACCO

| | | NEW | EFFECTIVE | POLICY | |
|-----|--------------|-----|-----------|--------------------|------------|
| | MUNICIPALITY | AGE | DATE | TYPE | POPULATION |
| 1. | Needham | 21 | 4/1/2005 | health regulation | 28,886 |
| 2. | Brookline | 19 | 6/1/2013 | bylaw: AG-approved | 58,732 |
| 3. | Belmont | 19 | 8/1/2012 | health regulation | 24,729 |
| 4. | Watertown | 19 | 12/1/2012 | health regulation | 31,915 |
| 5. | Westwood | 19 | 4/1/2013 | health regulation | 14,618 |
| 6. | Sharon | 21 | 5/19/2013 | health regulation | 17,612 |
| 7. | Walpole | 19 | 5/21/2013 | health regulation | 24,070 |
| 8. | Arlington | 21 | 7/1/2015 | health regulation | 42,844 |
| 9. | Canton | 21 | 1/1/2014 | health regulation | 21,561 |
| 10. | Ashland | 21 | 1/1/2014 | health regulation | 16,593 |
| 11. | Sudbury | 19 | 1/1/2014 | health regulation | 17,659 |
| 12. | Dedham | 21 | 1/1/2014 | health regulation | 24,729 |
| 13. | Dover | 21 | 1/4/2014 | health regulation | 5,589 |
| 14. | Wellesley | 21 | 6/1/2014 | health regulation | 27,982 |
| 15. | Scituate | 21 | 5/1/2014 | health regulation | 18,133 |
| 16. | Hudson | 21 | 7/1/2014 | health regulation | 19,063 |
| 17. | Norwood | 21 | 7/1/2014 | health regulation | 28,602 |
| 18. | Winchester | 21 | 7/1/2014 | health regulation | 21,374 |
| 19. | Wakefield | 21 | 7/1/2014 | health regulation | 24,932 |
| 20. | Reading | 21 | 7/1/2014 | health regulation | 24,747 |
| 21. | NEWBURYPORT | 19 | 7/1/2014 | health regulation | 17,416 |

Cities in Capital Letters

POPULATION TO 19: 189,139 (7)
POPULATION TO 21: 322,620 (14)
POPULATION TOTAL: 511,759

NATIONAL POLICY WITH AGE 19: AK, AL, UT, NJ and 3 counties in New York State

NATIONAL POLICY WITH AGE 21: New York City (effective date - mid-May 2014);
Big Island in Hawaii

3/31/14

T21

It's simple math: Raising the minimum tobacco sales age to 21 will dramatically reduce tobacco use

2% of tobacco sales produces 90% of new smokers. Cigarette sales to those under 21 account for only 2.12% of total sales. But, because 90% of smokers start before the age of 21, these are the very sales that produce 9 out of every 10 new smokers. This means that the impact on store owners will be minimal and will only affect a very small percentage of their tobacco sales in the near term.¹

Raising the minimum tobacco sales age to 21 can reduce smoking rates to single digits. Only 10% of smokers start at the age of 21 or older.² If the current smoking rate is about 20%,³ then by simple math, if someone reaches the age of 21 as a non-smoker, that individual has only a 2% chance of becoming a smoker ($.1 \times .2 = .02 = 2\%$). In New York City and other places where the smoking rate is down to 15%, a young person would only have a 1.5% chance of becoming a smoker ($.1 \times .15 = .015 = 1.5\%$) at the age of 21 or above.

This strategy is already working. In 2005, Needham, Massachusetts voted to raise the minimum tobacco sales age to 21. In 2006, before full implementation, the town had a youth smoking rate of 13% compared with 15% in the surrounding communities. By 2010, the youth smoking rate in Needham was down to 6.7% while the surrounding communities' rate only decreased to 12.4%. The percent decline in youth smoking in Needham was nearly triple that of its neighbors.⁴

90% of people who purchase for distribution to minors are between the ages of 18 and 20.⁵ Since most students do not reach twenty-one years of age while still enrolled in high school, increasing the legal age of sale would greatly reduce the number of students who could purchase tobacco products. By decreasing the number of eligible buyers in high school, this action will help reduce youth smoking by decreasing the access of students to tobacco products.

A similar strategy was highly successful in addressing alcohol sales. A national age 21 law for alcohol sales resulted in dramatic reductions in drunk driving fatalities.⁶ At the time, some critics of the policy argued that because 18 year-olds can vote and enlist in the military, they should be allowed to be sold alcohol. Despite these arguments, the increase in the minimum sales age for alcoholic beverages has saved tens of thousands of lives of young drivers, their passengers, and others on the road.⁷

¹ Analysis of National Health Interview Survey (NHIS) data from 2011 by Jonathan P. Winickoff, MD, MPH, Associate Professor of Pediatrics, Harvard Medical School.

² This is a conservative estimate. Centers for Disease Control and Prevention. National Center for Health Statistics. National Health Interview Survey, 2008. Analysis by the American Lung Association, Research and Program Services Division using SPSS software.

³ CDC. Morbidity and Mortality Weekly Report. "Current Cigarette Smoking Among Adults — United States, 2011." November 9, 2012. 61(44):889-894.

⁴ Analysis of 2011 Youth Risk Behavior Surveillance System (YRBSS) data by Jonathan P. Winickoff, MD, MPH, Associate Professor of Pediatrics, Harvard Medical School.

⁵ Difranza JR, Wellman RJ, Mermelstein R, et al. The natural history and diagnosis of nicotine addiction. *Current Reviews in Pediatrics*. 2011;7(2):88-96.

⁶ Wagenaar AC. Minimum drinking age and alcohol availability to youth: Issues and research needs. In: Hilton ME, Bloss G, eds. *Economics and the Prevention of Alcohol-Related Problems*. National Institute on Alcohol Abuse and Alcoholism (NIAAA) Research Monograph No. 25, NIH Pub. No. 93-3513. Bethesda, MD: NIAAA; 1993:175-200.

⁷ NHTSA's National Center for Statistics and Analysis, March 2005. "Calculating Lives Saved Due to Minimum Drinking Age Laws." Washington, DC, U.S., DOT.

Personnel Subcommittee Report on Warrant Articles 27

The Personnel Subcommittee held a public hearing to consider Warrant Article 27 on Monday March 31 at 5:00 pm in Brookline Town Hall, room 111.

Attendees:

Nancy Heller (AC); Christine Westphal (AC); Chuck Swartz (AC); Sumner Chertok (AC); (Petitioner of Article 5 and TMM Pct. 16); Neil Gordon, Petitioner, and Bill McGroarty, Veterans Director for the Town.

Background:

Article 27, a resolution concerning the flying of a flag for deceased Brookline veterans, was submitted by TMM Neil Gordon. He asks that the Town honor the memory of each veteran in a very simple way – by flying a United States Flag, usually the one which is given to the veteran's family, and noting that honor by issuing a resolution of the Board of Selectmen.

Discussion:

The resolution requests that Town Meeting urge the Board of Selectmen to adopt a program with the following components:

1. Upon the reasonable request of a veteran's family or friend, the Board of Selectmen would authorize the flying of a Burial Flag in memory of any deceased veteran who was, at any time, a resident of the Town, and who served honorable in any branch of the United States Armed Forces.
2. The Board would determine where the flag would be flown, for how long and what, if any, ceremony would accompany it.
3. The Burial Flag would usually be the one provided to the veteran's family by the Veterans Administration, so the Town would not incur a cost. After the flag is flown, it would be returned to the family. However, if a suitable flag from the family is not available, the Town would loan one at modest cost for use in the flag raising and ceremony.
4. As part of this program, the Board of Selectmen would provide a letter or certificate to the family, with the text of the resolution by the Board to fly the flag in memory of the veteran and his/her honorable service.
5. The Board of Selectmen would also use reasonable means to publicize this program.

The Petitioner acknowledged that the program, as set out in Article 27, gave general direction to the Board of Selectmen, but left many details to the Board to adopt. There are many different

situations for the family and friends of veterans who had a nexus to the Town. The program would encompass any veteran who was born here or lived in Brookline at any point in his/her life, even if the veteran did not die while a resident of the Town.

The Veterans Director estimates while approximately 5 to 10 % of the Town's population is veterans, many of the families will not avail themselves of this program. He is comfortable with general details and is willing to organize the flag flying ceremony at any time that is convenient for the veteran's family.

In our discussion, the Veterans Director stated that he would recommend some guidelines to the Board:

1. The first step, after identification of the veteran, is to obtain a copy of the discharge to certify that he/she is legitimately a veteran, has had an honorable discharge and has a nexus to Brookline.
2. Next, the Town would obtain a death certificate.
3. The Veterans Director would work with the family to set a time and place for a ceremony, if any and this would be communicated to the Board of Selectmen.
4. The Board of Selectmen would authorize the flag flying and a ceremony, and issue a resolution to honor the Veteran. The flag flying and ceremony, if any, could be done before the resolution is issued.
5. The flag flown would preferably be the one provided by the Veterans Administration to the veteran and would be returned to the family after the flag flying and ceremony. (The VA only provides a flag if the veteran was honorable discharged) About 75 to 80% of the families of honorably discharged vets receive the flag, although in certain circumstances, the flag may not be available, especially if the ceremony is held very soon after death.
6. If the family does not have a flag, the Veterans Director would loan one at a modest cost to the Town, and loaned flag would be retained by the Town.
7. If there is enough time, there could be notice in the local paper of the flag raising and ceremony.

The subcommittee members agreed with Petitioner that this program is very modest, but would be a meaningful way to recognize a veteran's honorable service.

Recommendation:

The Personnel Subcommittee voted unanimously in favor of Article 27, as submitted by the Petitioner.

PUBLIC SAFETY SUBCOMMITTEE HEARING

WARRANT ARTICLE 32: RESOLUTION ON STATE PENSION FUND DIVESTMENT

Thursday, March 31, 2014, 7 PM

Room 310, Town Hall

Petitioners: Frank Farlow and Byron K. Hinebaugh

IN ATTENDANCE

Petitioners Frank Farlow and Byron Hinebaugh; State Representative Frank Smizik; AC Public Safety Subcommittee members Janice Kahn, Chair, Karen Wenc, Lea Cohen and Alisa Jonas; Brookline residents Edward Loechler (Climate Action Brookline); Werner Lohe (Selectmen's Climate Action Committee and Climate Change Action Brookline, TMM 13); Tommy Vitolo (TMM 1); Suzette Abbott (350.MA); David Klafter (TMM 12); Patricia Connors (TMM 3); Steve Lydenberg; Frank Farlow (TMM 12); Cornelia van der Ziel (TMM 15); Reita Ennis (350MA); Miram Habib; Lee Cooke Childs (TMM 12); Arthur Conquest (TMM 6); and Tom Kilday (Climate Action Brookline).

BACKGROUND

Senate bill S.1225, filed by Senator Benjamin Downing and currently being considered by the Joint Committee on Public Service, requires divestment of fossil fuel holdings by the State pension fund. The key provisions are

1. Divestment would be mandated for securities held directly by the pension fund of companies in the coal, oil, and gas sectors.
2. Divestment would not be mandated for securities held indirectly by the pension fund, that is, securities held by a fund that is not managed by the pension fund, such as mutual funds or hedge funds.
3. Divestment would be accomplished on an incremental basis, with 20% of the fund's fossil fuel industry securities to be removed each year over a 5 year period.
4. The pension fund can reinvest in the fossil fuel industry if an analysis of the fund performance shows that investment returns have resulted in the value of the fund becoming 99.5% less than if the fund had not divested from the fossil fuel industry.

Warrant Article 32 would urge the Massachusetts legislature to enact the bill.

DISCUSSION

Several issues were discussed during the subcommittee hearing, including whether climate change is being caused by human activity and the extent to which fossil fuels are the main culprit, whether divestment is the right tool to bring about a decrease in fossil fuels, and whether other municipalities have divested in fossil fuels, to what extent this bill has support in the State, and the impact on the State's pension fund's rate of return if fossil fuels were eliminated from the portfolio.

All of the persons who attended the hearing were in favor Warrant Article 32, and many of them spoke about the scientific evidence for climate change and the need to take action locally to influence change at the national level.

Frank Farlow noted that the divestment movement is spreading, with divestment campaigns in 500 universities, and with the leadership of 21 cities and towns having already taken the position that their retirement boards should divest from fossil fuels. Included among these are several Massachusetts municipalities, including Cambridge and Northampton. He also noted that Concord, Framingham and Sudbury also have divestment warrant articles for the spring Town meeting. Other states with divestment initiatives include Minnesota, New York, Maine, and Vermont.

David Klafter discussed three reports that came out recently and that noted the urgency of the climate change problem. The first, published in the Journal on the Advancement of Science, gave warnings about the acceleration of climate change, and the need to take steps to prevent further increases in temperature before the problem becomes irreversible. He noted that the Journal does not generally make policy recommendations unless there are dire circumstances that need to be addressed. The second report was from the UN-sponsored Intergovernmental Panel on Climate Change, which asserted that hat global warming is almost certainly man-made and poses a grave threat to humanity, and that to keep warming in check, the world needs a major shift in investments from fossil fuels to renewable energy. The third report he cited was the U.N. World Meteorological Report, which discussed its finding that of the 14 warmest years on record, 13 occurred since the year 2000. He also noted that World Bank President Jim Yong Kim has discussed the urgency to address climate change at the World Economic Conference in Davos.

Patricia Connors spoke about an article on climate change in Monday's New York Times, citing worldwide displacement and "climate refugees" with further rises in worldwide temperatures. She also noted that all five of the Democratic candidates for Governor, speaking at a recent forum, all supported Senate bill 1225, including Steven Grossman, the current State Treasurer.

Werner Lohe spoke to emphasize the importance of the timing of the Warrant Article. He noted that there are currently many shareholder initiatives being initiated at fossil fuel companies to analyze risk and the cost of carbon emissions and initiatives nationwide will be considered.

Representative Smizik spoke about the impact that climate change is already having locally, including large increases in insurance costs for persons living near the ocean due to rising sea levels, the financial impact on the State's fishing industry as fish move north to avoid the rising temperatures, and danger to the cranberry and maple syrup industries, since these require cold winters.

Much of the discussion focused on the impact of fossil fuel divestment on the pension fund's rate of return. To analyze the impact, the petitioners elicited the assistance of Steve Lydenberg, a Brookline resident and the founder of the Domini Social Index, and the former

Chief Investment Officer and Vice-President of Domini Social Investments, the country's first investment firm that screens for socially responsible investments, and who currently selects the corporations that qualify for investments in the fund. Lydenberg has done analyses of numerous studies of differential rates of return by screened and unscreened funds, some of which showing slightly higher rates of return by the socially responsible funds, and others showing the reverse. He found that the most rigorous studies showed no statistically significant difference between funds screened to be socially responsible and unscreened funds.

Ed Loechler presented a study by the Aperio Group, an asset management firm, that found that a comparison of the rate of return for the Russell 3000 portfolio with a hypothetical portfolio of the Russell 3000 but without fossil fuel company stocks over a 15 year period showed that the screened portfolio showed a .08% higher average annualized 10-year rate of return. This finding largely corresponds with Steve Lydenberg's analysis.

In contrast to these findings, Stephen Cirillo, Director of Finance, obtained guidance from investment advisors at Russell Index, which invests most of the Town's pension fund assets, UBS, and another investment firm. These advisors gave estimates of 1-2.5% reductions in rates of return if fossil fuel companies would be excluded from the Town's portfolio – though they might have a different assessment about the State fund.

The subcommittee suggested that there be some discussion between Steve Lydenberg and Stephen Cirillo to try to reconcile the different outcomes.

There was some opposition in the subcommittee based on skepticism as to the origin of climate change and the fact that we all use fossil fuels and it is not appropriate to demonize fossil fuel companies, which produce a product that we all use. As just noted, some in the subcommittee also wanted further clarification as to the divergent assessments on rates of return between those presented at the meeting and those given to Stephen Cirillo. Given the importance of taking action on climate change, however, the subcommittee generally was supportive of the warrant article, though we worked with the petitioners on two minor wording changes:

In the fourth "Whereas" clause, the words "a total of" are added before "565 gigatons" to add clarity.

In the fifth "Whereas" clause, the wording is changed to "Whereas fossil fuel companies spend great sums of money in order to avoid paying the true cost of the environmental damage they cause and continue to explore for even more fossil fuel deposits that could not be burned without drastic acceleration of climate change; and"

The subcommittee voted 3-1 in favor of the warrant article with these minor wording changes.